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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,035	08/05/2003	Kevin L. Mercuri	10151-001	7274

29391 7590 05/07/2007  
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EXAMINER
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DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/635,035	MERCURI ET AL.
	Examiner	Art Unit
	Jerome W. Donnelly	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 2/14/06

2a)  This action is **FINAL**. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) \_\_\_\_\_ is/are pending in the application. 1-3 and 5-20

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration. 17-20

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected. 1-3 and 5-16

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY  
PRIMARY EXAMINER

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_.

Claims 1-3, 5-8, 10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway in view of Anderson and Sawyer.

Hathaway discloses an enclosure having a relatively flat configuration in the absence of ballast and having a cylindrical configuration when ballast material present, said enclosure having an opening (14) first and second handles 16 and 16.

Hathaway however does not disclose his device wherein it includes identifying indicia.

Sawyer and Anderson disclose devices wherein identifying indicia is disclosed for identifying.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide indicia on the device of Hathaway for the purpose of identify/describing the contents of Hathaway.

Hathaway discloses a device comprising: a device formed in the shape of a curved enclosure said device having first and second handles (16) supported on the ends of said enclosure and wherein said device has a closable opening formed to receive element 36, 40 and 50 as claimed in claims 2 and 8.

In regard to claims 3, 5 and 7 Hathaway has a length and diameter which relates to the amount of weight it will hold.

In regard to claim 6, element 50 is non-porous to liquid.

In regard 10, note the opening (14) of Hathaway, which is positioned on an upper surface the device.

In regard to claims 13-15 Hathaway discloses a device wherein the enclosure is capable of being formed into a substantially circular enclosure having first and second ends, said handles being disposed on said end surfaces respectively.

In regard to claim 16 note looped members 16 of Hathaway.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindsay in view of Anderson.

Claims 9 and 12 are rejected for the same reasons as set forth in the office action of 8-14-06 and further in view of Anderson which discloses the use of indicia.

Given the teaching of Anderson of using indicia to identify desired aspects of his invention, the examiner notes that it would have been obvious to one of ordinary skill in the art to provide indicia on the device of Lindsay for the purpose of identifying critical criteria of Lindsay.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephan in view of Lindsay.

Claim 11 is rejected for the same reasons as set forth in the office action of 8-14-06 and further in view of Anderson, which discloses the use of indicia.

Given the above teaching of Anderson of using indicia to identify desired aspects of his invention the examiner notes that it would have been obvious to one of ordinary skill in the art to provide indicia on the device of Stephan for the purpose of identifying critical criteria of Lindsay.

Claims 17-20 are withdrawn from further consideration as being drawn to a non-elected invention. The restriction requirement is made Final.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

